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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HEATHER HASSO, Plaintiff and Respondent, v. HELENE HASSO, Defendant and Appellant.	G039919 (Super. Ct. No. 07CC08863) O P I N I O N

Appeal from an order of the Superior Court of Orange County, William M. Monroe, Judge. Affirmed.

Latham & Watkins, Jon D. Anderson, Kristine L. Wilkes, Nicole R. Vanderlaan Smith and Michael DeVries for Defendant and Appellant.

Michael Creamer; Rosenberg, Mendlin & Rosen and Roger Rosen for Plaintiff and Respondent.

Defendant Helene Hasso (Helene) appeals from an order denying her motion to compel arbitration with her daughter, plaintiff Heather Hasso (Heather).[1] Helene contends this case is subject to an arbitration clause contained in a settlement agreement resolving her child support obligation to Heather. She notes Heather's allegations in this case mirror her allegations in the guardianship petition underlying the child support litigation. But the arbitration clause governs only disputes connected to the settlement agreement itself — not all disputes arising out of or related to the guardianship petition's allegations. The court correctly denied Helene's motion.

FACTS

Heather petitioned in 2005 to have her paternal grandparents appointed guardians ad litem on the ground Helene was verbally and emotionally abusive. She set forth the abuse allegations in an attachment to the guardianship petition and her attached declaration. The court granted the petition.[2]

The grandparents petitioned to recover child support from Helene. They submitted a joint declaration with their child support petition. Their declaration attached the guardianship petition, including Heather's prior declaration.

Helene, the grandparents, and Heather's counsel entered into a "Stipulation and Order Re: Child Support" in March 2006, which the parties call the settlement agreement.[3] It provided, "This stipulation is entered into as a compromise of the issues between the Guardians ad Litem, on behalf of [Heather], and [Helene] solely in this

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1 We respectfully adopt the parties' use of first names for clarity.

2 Helene opposes Heather's motion to augment the record with the order granting the petition, but does not dispute the petition was granted. We deny the motion but accept Helene's concession.

3 We express no opinion on the stipulation's legal effect.

Family Law matter regarding child support for [Heather]." It required Helene to pay $480,000 to Heather via 96 monthly payments of $5,000. "This amount," the settlement agreement provided, "represents a compromise concerning child support obligations accrued by [Helene]." Heather states she is a party to the settlement agreement and bound thereby.

The settlement agreement contained an arbitration clause. It provided, "In the event that there is a dispute between the parties and/or [Heather] that is connected to this agreement, the parties agree to submit the matter to arbitration with J.A.M.S." The words "that [are] connected to this agreement" were added by handwritten interlineation.[4]

Heather filed this action against Helene and others in October 2007. She asserted causes of action for intentional and negligent infliction of emotional distress and fraudulent conveyance. Heather supported her emotional distress claims with allegations of verbal and emotional abuse substantially similar to those in her guardianship petition. She also alleged Helene had fraudulently transferred assets to the codefendants to evade the judgment Heather sought against her.

Helene moved to compel arbitration, claiming this action was subject to the settlement agreement's arbitration clause. The court denied the motion.[5]

DISCUSSION

The parties submitted lengthy briefs on a simple issue: Is this action a "dispute . . . that is connected to [the settlement] agreement?" The parties offered no

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[4] Heather asserts the settlement judge added the words. Helene suggests no other source of the handwriting.

[5] The court rejected Helene's contention Heather waived any objection to arbitration by filing her opposition to the petition to compel arbitration one day late. We see no reversible error here.

competent extrinsic evidence for interpreting the settlement agreement. (See *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166, fn. 3.) We thus construe it de novo and independently determine whether this action is subject to the arbitration clause.[6] (*Ibid.*; *Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1670.)

This action is not subject to the arbitration clause. This action has no substantial connection to the settlement agreement resolving the child support petition. It does not assert any claim arising from the settlement agreement. It does not attempt to enforce the settlement agreement. It does not allege any breach of the settlement agreement.

Nor does this action have any connection to any dispute resolved by the settlement agreement. In this action, Heather asserts Helene inflicted emotional distress upon her. In contrast, the settlement agreement purports to resolve nothing more than Helene's child support obligation to Heather. It was "entered into as a compromise of the issues . . . solely in this Family Law matter *regarding child support* for [Heather]." (Italics added.) The $480,000 payment from Helene to Heather "represents a compromise concerning child support obligations accrued by [Helene] . . . ." The settlement agreement does not purport to resolve the emotional abuse allegations underlying the guardianship petition, which had already been granted. It does not purport to settle any claims of emotional distress.

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[6] Heather offered the only extrinsic evidence for interpreting the arbitration clause. She filed a declaration from her grandmother stating, "I participated in the settlement conference before the Family Court that resulted in [the settlement agreement]. [¶] We did agree to arbitration as to the terms of the agreement. However, the arbitration was not intended to cover any pending litigation or future litigation in other courts. . . . Only the child support agreement (stipulation) and any disputes on the agreement were intended to be covered by arbitration." But "evidence of the undisclosed subjective intent of the parties is irrelevant to determining the meaning of contractual language." (*Winet, supra*, 4 Cal.App.4th at p. 1166, fn. 3.)

The arbitration clause does not extend as far as Helene would like. The plain language of the arbitration clause limits its scope to "disputes . . . connected to [the settlement] agreement" itself. Helene contends this action is "connected" to the settlement agreement because the same emotional abuse allegations underlie this action and the settlement agreement. Not so. A convoluted legal hopscotch must be undertaken to connect the emotional abuse allegations in this action to the settlement agreement. The path is this: Heather asserted emotional abuse allegations in the guardianship petition, which the court granted, which gave standing to seek child support to Heather's grandparents, who then filed the child support petition and a declaration, which attached copies of the guardianship petition and Heather's declaration as exhibits, and the child support claim was resolved by the settlement agreement — though it does *not* purport to resolve the abuse allegations. This attenuated connection is too fine a filament.

To be sure, an arbitration clause may extend beyond disputes purely on the contract itself. An arbitration clause may "broadly encompass tort claims having their roots in the contractual relationship between the parties." (*EFund Capital Partners v. Pless* (2007) 150 Cal.App.4th 1311, 1323 (*EFund*).) Heather's emotional distress claim does not have its roots in the contractual relationship created by the settlement agreement. It has its roots in Helene's parental obligation to provide child support to Heather.

Helene misplaces her reliance on cases construing broader arbitration clauses. "[T]he paradigm of a broad clause" is the phrasing, "[a]ny claim or controversy arising out of or relating to th[e] agreement." (*Collins & Aikman Products Co. v. Bldg. Systems* (2d. Cir. 1995) 58 F.3d 16, 20 (*Collins*).) Helene's cases involve arbitration clauses close to this paradigm: "Any controversy or claim arising out of or relating to this Agreement or any breach of its terms" (*Fleet Tire Serv. v. Oliver Rubber* (8th Cir. 1997) 118 F.3d 619, 620); "'any controversy or claim arising out of or relating to this Agreement, or the breach hereof'" (*Drews Distributing, Inc. v. Silicon Gaming, Inc*. (4th Cir. 2001) 245 F.3d 347, 349 (*Drews*)); "'Any controversy or claim arising out of or

relating to any provision of this Agreement or the breach thereof'" (*Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell* (1999) 76 Cal.App.4th 227, 229); "'Any dispute or other disagreement arising from or out of this Consulting Agreement'" (*EFund*, *supra*, 150 Cal.App.4th at p. 1317); "'all disputes arising out of or relating to this Agreement'" (*Blatt v. Farley* (1990) 226 Cal.App.3d 621, 624); "'any dispute or claim in Law or equity arising between [the buyer and seller] out of this Agreement or any resulting transaction'" (*Johnson v. Siegel* (2000) 84 Cal.App.4th 1087, 1091, fn. 2). These broad clauses starkly contrast to the settlement agreement's terse restriction to arbitrate only "dispute[s] connected to this agreement."

Other cases Helene cites involve much closer connections between the disputes and the arbitration clauses. In one case, the plaintiff's wrongful termination and related claims were subject to his employment contract's arbitration clause, which covered "'any dispute of any kind whatsoever, regarding the meaning, interpretation or enforcement of the provisions of'" the contract. (*Vianna v. Doctors' Management Co*. (1994) 27 Cal.App.4th 1186, 1188 (*Vianna*).) In another, a manufacturer's claims against its dealer were subject to their 1995 agreement's arbitration clause, which covered "All disputes arising in connection with this Agreement." (*Simula, Inc. v. Autoliv, Inc*. (9th Cir. 1999) 175 F.3d 716, 720, italics omitted.) The manufacturer's antitrust claims were arbitrable because it "accuses [the dealer] of using the 1995 Agreement as an anti-competitive tool to restrain trade . . . ." (*Id*. at p. 721.) And the manufacturer's Lanham Act, defamation, and misappropriation claims were arbitrable because the dealer committed the alleged violations pursuant to pre-existing agreements subsumed by the 1995 agreement or while acting as its exclusive distributor under the agreement. (*Id*. at pp. 723-725.) In contrast here, Heather does not accuse Helene of misusing the settlement agreement, violating a contract subsumed by it, or abusing her rights under it.

Helene and Heather could have adopted a broad arbitration clause that would have covered this action. They could have extended the arbitration clause to cover

"any claim or controversy arising out of or related to the settlement agreement, the guardianship petition, or the emotional abuse alleged therein." (Cf. *Collins, supra,* 58 F.3d at p. 20 [paradigmatic broad arbitration clause].) They did not. "[T]he reach of an arbitration clause is not restricted to those causes of action brought under the contract containing the clause, unless the parties draft a clause so restricted in scope." (*Drews, supra,* 245 F.3d at p. 350.) That is what the parties did here. They chose to limit the arbitration clause to dispute "connected to [the settlement] agreement."

The parties expressly rejected a broader arbitration clause. The original typewritten arbitration clause provided, "In the event that there is a dispute between the parties and/or [Heather] the parties agree to submit the matter to arbitration with J.A.M.S." The parties did not agree to this language's sweeping scope. Instead, they agreed only to a much narrower arbitration clause — one with the handwritten restriction to disputes "connected to this agreement."

Helene cannot stretch the narrow arbitration clause by invoking the public policy favoring arbitration. Public policy "does not come into play . . . until a court has found the parties entered into a valid contract under state law" to arbitrate the relevant dispute. (*Metters v. Ralphs Grocery Co*. (2008) 161 Cal.App.4th 696, 701.) """There is no public policy favoring arbitration of disputes which the parties have not agreed to arbitrate."" (*Ibid*.) True, if we have any doubt as to the arbitration clause's scope, we should order arbitration; "'arbitration should be ordered unless the agreement clearly does not apply to the dispute in question.'" (*Vianna, supra,* 27 Cal.App.4th at p. 1189.) We do not; it does not.

DISPOSITION

The order is affirmed. Heather shall recover her costs on appeal

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.